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Liles, R. Limon and California Department of
Corrections and Rehabilitation

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

VICTOR PARRA, Jr.,

Plaintiff,

v.

R. HERNANDEZ, et al.,

Defendants.

08CV0191 H CAB

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO DISMISS
PLAINTIFF'S COMPLAINT BY
DEFENDANT CDCR**

Hearing: August 11, 2008
Time: 9:00 a.m.
Courtroom: E
Judge: The Honorable
Cathy Ann
Bencivengo

I

INTRODUCTION

Plaintiff Victor Parra, Jr., proceeding in pro se, is a California prison inmate currently incarcerated at R.J. Donovan Correctional Facility, San Diego, California. Plaintiff's Complaint, which is brought under 42 U.S.C. § 1983, concerns his refusal to sign an agreement to double

1 cell, and his alleged transfer to another unit where he had no yard for three months, then limited
2 yard for another three months after transfer to yet another unit. All Defendants have been served
3 except A. Cota. Defendants P. Cowan, R. Hernandez, W. Liles and R. Limon previously filed a
4 Motion to Dismiss which is scheduled to be heard on July 22, 2008.

5 II

6 THE STATE AGENCY DEFENDANT SHOULD BE DISMISSED

7 In his action brought under 42 U.S.C. 1983, Plaintiff sues California Department of
8 Corrections and Rehabilitation, among others. In his Complaint, Plaintiff admits this is a “state
9 agency.” (Complaint p. 2.)

10 Under the Eleventh Amendment, “agencies of the state are immune from private damage
11 actions or suits for injunctive relief brought in federal court.” *Dittman v. California*, 191 F.3d
12 1020, 1026 (9th Cir. 1999) (internal quotes omitted). Thus, Defendant California Department of
13 Corrections and Rehabilitation should be dismissed from the Complaint without leave to amend.
14 The court may dismiss a complaint without leave to amend if “it determines the pleading could
15 not possibly be cured by the allegations of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1127
16 (9th Cir. 2000) (en banc) (citing *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995)).

CONCLUSION

Defendant California Department of Corrections and Rehabilitation respectfully requests that it be dismissed from Plaintiff's Complaint without leave to amend.

Dated: July 10, 2008

Respectfully submitted,

EDMUND G. BROWN JR.
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s/ Sylvie P. Snyder

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Parra, Victor v. R. Hernandez, et al.**

No.: **08CV0191 H CAB**

I declare:

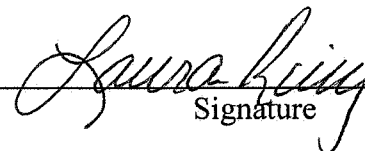
I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On July 10, 2008, I served the attached **NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFF'S COMPLAINT BY DEFENDANT CDCR and MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS PLAINTIFF'S COMPLAINT BY DEFENDANT CDCR** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

Victor Parra, Jr.
P-58682
Richard J. Donovan Correctional Facility at
Rock Mountain
P.O. Box 799006
San Diego, CA 92179-9006
In Pro Per
P-58682

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 10, 2008, at San Diego, California.

Laura Ruiz
Declarant


Signature